

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2017-381-A

IN RE:)
)
 Office of Regulatory Staff's Petition for)
 an Order Requiring Utilities to Report)
 the Impact Of the Tax Cuts and Jobs Act)
 _____)

MOTION FOR MODIFICATION OF
RATE SCHEDULE WITHOUT
HEARING

Pursuant to S.C. Code Ann. §58-5-240(G) (2015), 10 S.C. Code Regs. 103-829 (2012), and 10 S.C. Code Regs. 103-503 (2012), Palmetto Utilities, Inc. ("PUT") and Palmetto Wastewater Reclamation, LLC, ("PWR") (collectively, the "Companies") hereby move the Public Service Commission of South Carolina ("Commission") for an order permitting them to immediately place into effect a modification in their existing rate schedules relating to the subject matter of the above-captioned docket. In support thereof, the Companies would respectfully show as follows:

1. The Petition of the South Carolina Office of Regulatory Staff ("ORS") in this docket asserts that the enactment of the Federal Tax Cut and Jobs Act, Public Law 115-97, effective December 22, 2017 ("Tax Act"), warrants a requirement that jurisdictional utilities report to the Commission the impact of the Tax Act on their South Carolina operations for the purpose of ascertaining whether "South Carolina rate payers should receive any benefits associated with this tax reform." By Order No. 2018-26 issued January 10, 2018, in this docket, the Commission directed that jurisdictional utilities submit comments with respect to the ORS petition, which the Companies did on January 24, 2018.

2. Following its review of the comments made by a number of jurisdictional utilities, including the Companies, ORS has by letter dated March 7, 2018, (“ORS Letter”) recommended to the Commission that water and sewer utilities (other than those with pending rate relief proceedings) having annual operating revenues equal to or exceeding \$250,000 be required to record certain items on their books relative to the potential impact of the Tax Act¹ and “report to the Commission by May 31, 2018, the anticipated effect of the Tax Act, including the impact on Contributions in Aid of Construction.” It is to the latter of these recommendations that the instant motion is addressed.
3. As the Commission has previously observed, §13312(B) of the Tax Act “provides that [contributions in aid of construction] will no longer be treated as contribution to [utilities’] capital, but will instead be treated as ordinary income.” *See In Re Application of Palmetto Utilities, Inc.*, Order No. 2018-155, Docket No. 2017-228-S, issued March 7, 2018, at 21. As a result of this provision, the Commission has recognized that there would be an “increase in [utilities’] income for federal (and potentially state) income tax purposes in 2018.” *Id.* (Internal footnote omitted.)
4. As noted by ORS in its Petition, the Commission has heretofore been confronted with the effect on utilities from changes in Federal tax law following the enactment of the Federal Tax Reform Act of 1986 (“1986 Act”). In fact, subsequent to the 1986 Act, the Commission approved for PUI a provision in its rate schedule which required that the persons or entities making contributions in aid of construction – including cash in the form

¹ Specifically, ORS requests that these water and sewer utilities be required by the Commission to (a) “begin deferring for future ratemaking proceedings all revenue requirement benefits of the Tax Act from January 1, 2018 until the effective date of new rates,” (b) “calculate the excess deferred tax reserve caused by the reduction in the corporate federal income tax rate and recognize as a deferred liability the estimated reduction of the utilities revenue requirement resulting from the Tax Act,” and (c) “calculate and defer any other tax effects resulting from the Tax Act on known revenue requirements.” *See* ORS Letter at 3. In essence, ORS seeks by these requests adoption of an accounting order for water and sewer utilities, the effect of which will be determined in future rate relief proceedings.

of non-recurring connection fees and in-kind contributions in the form of donated plant facilities – pay a tax multiplier which recovered the amount of income tax imposed as a result of the 1986 Act. See Order No. 2018-155 at 21, n. 68.

5. The Commission is authorized under §58-5-240 (G) to allow rates or tariffs to be put into effect by the Companies without a hearing upon order of the Commission when such rates or tariffs do not require a determination of their entire rate structures and overall rates of return or when rates do not result in any rate increase to the public utility. *Cf.* Petition at 2, n.2 (“S.C. Code Ann. §58-27-870(F) provides a mechanism for implementing rate changes that does not require a hearing”).
6. Application of §13312(B) of the Tax Act will increase the Companies’ corporate income taxes, which may be recovered through the Companies’ rate structure. Thus, this increase in tax liability will be passed on to *all* customers via the Companies’ rate structure, absent further action. If, however, a tax multiplier were authorized, the burden of taxes on contributions in aid of construction would be borne by those future customers, developers, and others who *make* the contributions in aid of construction (and thus create the tax liability), versus the Companies’ customers as a whole.
7. The Companies therefore move that they be allowed to add a tax multiplier provision to their approved rate schedules² consistent with that approved by the Commission following the enactment of the 1986 Act.³ The Companies propose the following language in this regard:

² The current PWR rate schedule was approved by Commission Order No. 2014-752 issued September 18, 2014, in Docket No. 2014-69-S. The current PUI rate schedule was approved by Commission Order No. 2018-155, *supra*.

³ See Order No. 88-311, issued March 23, 1988, in Docket No. 96-376-S and Order No. 2018-155 at 21, n.68.

TAX MULTIPLIER

Except as otherwise provided by contract approved by the South Carolina Public Service Commission, amounts paid or transferred to the Utility by customers, builders, developers or others, either in the form of cash or property, shall be increased by a cash payment in an amount equal to the income taxes owed on the cash or property transferred to the Utility by customers, builders, developers or others and properly classified as a contribution or advance in aid of construction in accordance with the Uniform System of Accounts. Included in this classification are sewer service connection charges and plant impact fees. The amount of the required cash payment shall be \$33.24 for each \$100 in contribution or advance in aid of construction, which is based upon the total effective Federal and South Carolina corporate income tax rate.⁴ This amount may be changed to reflect any changes in either corporate income tax rate.

8. The Companies submit that adoption of this modification to their rate schedules does not require a determination of their entire rate structure or overall rate of return because the proposed modification (a) does not change a rate applicable to any current customer, (b) would not generate operating revenue for the Companies but only passes through to future customers, developers, or others increases in expenses directly attributable to the extension of service to such future customers, developers, or others, and (c) will avoid a reduction in the benefit which ORS believes current ratepayers might realize from the decrease in the corporate income tax rate.

⁴ The current total effective income tax rate for PUI and PWR is 24.95%. This is calculated as $\text{Tax Rate} = F + S(1-F)$. Therefore, the tax Multiplier that should be used to increase the CIAC (cash or donated facilities) amount for the Tax Act is 33.24%. This is calculated as $\text{Multiplier} = \text{Tax Rate} / (1 - \text{Tax Rate})$, where:

Tax Rate = Total effective income tax rate

F = Federal tax rate of 21%

S = South Carolina State tax rate of 5%

Therefore, for a \$100 base amount of CIAC, the total payment would be \$133.24 and the tax multiplier liability would be \$33.24. A Connection Fee of \$250 would require a total payment of \$333.11 and an Impact Fee of \$800 would require a total payment of \$1,065.96.

9. Should the Commission be disposed to grant this Motion, the Companies submit that notice to current customers of the proposed modification is unnecessary, as it does not affect the rates, charges, or services of current customers.

WHEREFORE, having fully set forth its motion, and for the foregoing reasons, Palmetto Utilities, Inc. and Palmetto Wastewater Reclamation, LLC, respectfully move that the Commission approve the modification to their rate schedule proposed herein without hearing, that they thereafter be permitted to implement such modification to their rate schedules upon such approval, and that they be granted such other and further relief as is just and proper.

s/John M.S. Hoefer
John M. S. Hoefer
Benjamin P. Mustian
Willoughby & Hoefer, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
jhoefer@willoughbyhoefer.com
bmustian@willoughbyhoefer.com

Attorneys for Palmetto Utilities, Inc.
and Palmetto Wastewater Reclamation, LLC

This 27th day of March, 2018.
Columbia, South Carolina